

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

NANCY DUVALL

PLAINTIFF

v.

Civil No. 05-5001

CITY OF ROGERS, ARKANSAS

DEFENDANT

O R D E R

Now on this 9th day of September, 2005, comes on for consideration **Plaintiff's Motion In Limine To Prevent Attorney Testimonial** (document #19), and from said motion, and the response thereto, the Court finds and orders as follows:

1. Plaintiff claims that defendant, the City of Rogers, owes her compensation for damaging a historic house she owned in the City of Rogers. The conduct complained of is alleged to have taken place after condemnation proceedings involving the City Council.

2. Plaintiff's Motion In Limine points out that the attorney representing defendant in this case would have been involved in the condemnation proceedings, and asks that the Court order, in limine, that defense counsel "not make any statements to the jury that are testimonial in nature."

3. The defendant objects, contending that the motion is "overbroad and overreaching" and "would have the effect of hamstringing" its attorney.

4. The Court is not persuaded either that the motion is

overbroad, or that it would hamper defendant in the presentation of its case. **Rule 3.7** of the **Arkansas Rules of Professional Conduct** prohibits a lawyer from acting as an advocate in a trial in which he is likely to be a necessary witness, and to the extent that defense counsel is not a necessary witness, he should have no difficulty in avoiding statements that are testimonial in nature. The motion will therefore be granted.

**IT IS THEREFORE ORDERED** that **Plaintiff's Motion In Limine To Prevent Attorney Testimonial** (document #19) is **granted**.

**IT IS SO ORDERED.**

/s/ Jimm Larry Hendren  
**JIMM LARRY HENDREN**  
**UNITED STATES DISTRICT JUDGE**